Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of	)	**CC Docket No. 01-92**
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF MID-RIVERS TELEPHONE COOPERATIVE, INC. REGARDING THE MISSOULA PLAN FOR INTERCARRIER COMPENSATION REFORM

Mid-Rivers Telephone Cooperative, Inc. (MRC) hereby files its comments in connection with the filing by The Missoula Plan Supporters of a plan to reform the intercarrier compensation rules in the telecommunications industry, referred to as the Missoula Plan (Plan).

Introduction

The Missoula Plan Supporters, a large group of industry members, has recently developed and submitted for consideration a comprehensive proposal for reforming intercarrier compensation mechanisms and interconnection rules. While the Plan is well thought out and provides a number of needed improvements to the intercarrier compensation system, it fails to adequately address several important issues that affect the unique circumstances of rural facility based CLECs.

First and foremost, the Plan, as filed, is incomplete. The implementation details for certain key elements of the Plan as they apply to some industry entities are not yet included in the Plan. In particular MRC is concerned that the rules and procedures governing the computation and distribution of the Restructure Mechanism (RM) amounts for rural facility based CLECs are not determined.[1] The proposed Plan simply states that the circumstances under which RM amounts will be available to non-ILECs will be determined in the future.[2] It is essential that the Commission establish the necessary policy and rules that will govern the distribution of RM amounts to rural facility based CLECs before the Plan is adopted.

In addition, while focusing on the needs and special circumstances of rural ILECs, the Plan does not sufficiently consider the needs of the rural areas themselves and the corresponding impact of the Plan on rural facility based CLECs which serve the same types of areas and customers as rural ILECs. This manifests itself in at least three areas: the access rate levels proposed for rural facility based CLECs, the interconnection rules proposed for rural facility based CLECs, and the

[1] The contribution mechanism required to fund the RM is also not established in the proposed Plan. However, this issue will need to be addressed for the entire industry, and MRC does not choose to comment on this issue at this time.
[2] Missoula Plan, Section VI.A.2.

proposed Track classification for Track 1 exchanges purchased by rural LECs, either ILEC or CLEC.

Facility based rural LECs, both ILEC and CLEC, face higher cost structures in providing service to their customers in the rural areas than those incurred in serving urban areas. Federal and State regulators have recognized this economic fact many times in rulings crafting rate and cost support systems for rural areas. While the Plan takes important steps to recognize the unique needs of rural ILECs, rural facility based CLECs are treated the same way as large ILECs and urban CLECs. The result is that the special needs of rural facility based CLECs and their customers, which are virtually the same as those of rural ILECs, are ignored.

Finally, the Plan maintains the Track classification for Track 1 exchanges that undergo a change in ownership. Rural exchanges have the same high cost structure regardless of their Track classification under the Plan or their ownership. Rural exchanges acquired by rural LECs require the same treatment as any other rural LEC since the same circumstances apply to those acquired exchanges.

It is critical that the Commission continue to support the needs of rural areas to assure that the benefits of facility based competition will continue for all areas. Adoption of the Plan as it is currently crafted will undo much of the Commission's previous policy decisions in regard to fostering competition in rural areas. Some of the provisions of the Plan will place a severe financial burden on existing rural facility based CLECs by eliminating a significant revenue source. Additionally, the incentive for companies to compete in rural areas will be eliminated or severely diminished, denying rural areas the benefits of competition enjoyed by citizens living in urban areas. The final result would be a return to the inferior levels of service that existed before the Commission established its policies to enable quality rural services.

Mid-Rivers Communications

Mid-Rivers Telephone Cooperative, Inc., is a rural LEC operating in Montana and North Dakota. The company was established in 1952 and does business as Mid-Rivers Communications. It operates as an ILEC in some geographic areas and as a CLEC in other areas. The company has approximately 24,500 working access lines of which approximately 18,700 are residential lines and 5,800 are business lines, and it employs 175 people. MRC provides one-party telephone service with advanced calling features in a 30,000 square mile area located in a 21-county portion of eastern Montana and three counties in North Dakota. MRC is the largest land mass telephone cooperative in the Continental United States. The company operates over 10,100 route miles of telephone line and continues to install fiber optic cable. Approximately 1,400 miles of fiber optic cable are installed in MRC' service area. MRC has invested over $160 million in telephone plant.

MRC also offers long distance services, video entertainment services, broadband internet access services, cellular service, and business CPE in its operating area. Although MRC has diversified its operations over the years, it provides services only in the rural areas which require higher levels of investment than generally required in urban areas.

The Mid-Rivers Rural CLEC Division

In the early 1990's the company perceived a demand for improved quality in the local telecommunications services that were then provided in some nearby exchanges served by other ILECs. In 1997 it launched facility based CLEC services in those exchanges to meet the unanswered demand.

Since launching its CLEC activities, MRC has invested over $57M in CLEC plant in order to bring high quality, modern telecommunications services to its subscribers. Most of this investment has been used to overbuild ILEC plant that was in poor repair. Construction was started in the town centers of the exchanges and has continued outward from the initial town center build to reach more remote subscribers. Today MRC has additional plans to continue the expansion of its facilities to cover still more of the rural service area with modern, well maintained plant. The planned construction budget for the CLEC operation is estimated at $4M per year over the next 5 years.

MRC has been quite successful in penetrating new markets and now has over 13,800 telephone access lines in its CLEC exchanges. Its exchange market share in its facility based service area is as high as 98% with a penetration in all exchanges combined of 77%. The company believes that the reason for its success is the significantly improved level of service provided to customers both in the new services offered and in associated customer service.

MRC's CLEC is an ETC in all of the areas that it serves. Its first ETC certification was granted for the Wibaux exchange in 2000 and the most recent ETC designation for Lewistown was granted in 2006.

The Commission recently ordered that the MRC CLEC operation in the Terry exchange be treated as an ILEC for purposes of the interconnection provisions (section 251) of the 1996 Telecommunications Act in response to the company's request.[3]

Impact of the Missoula Plan as Submitted

There are four areas of the Plan, as submitted, which will negatively impact rural facility based CLECs including the MRC CLEC operation. These are: 1) the lack of rules and procedures for the computation and distribution of RM amounts to rural facility based CLECs, 2) the requirement that rural facility based CLECs are automatically classified as a Track 1 company which results in decreases to access rates to the same levels as urban CLECs and large ILECs, i.e. the Plan's Track 1 access reduction transition process, 3) the failure to make the special edge interconnection provisions that are available to rural ILECs available to rural facility based CLECs, and 4) the inability to move rural ILEC exchanges to Track 3 treatment when purchased by a rural LEC, either ILEC or CLEC.

[3] See Wireline Competition Docket 02-78, Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2).

The impacts of each of these areas are discussed below.

Rules for the Computation and Distribution of RM Amounts

The Executive Summary of the Plan developed by the Plan Supporters contemplates the distribution of RM amounts to CLECs. Indeed, the Plan Supporters have included RM distributions to CLECs in developing their estimate of the size of the RM at $1.5 billion.[4] However, the RM amount distributed to CLECs is not directly discussed in the Executive Summary. Since the Plan does not contain rules for the distribution of RM amounts to CLECs, it is not clear how CLEC RM amounts were estimated.[5]

Although the plan describes the process for the phased changes to access charge rates for all industry entities, the section of the Plan which addresses the RM is silent for all entities except ILECs. Section VI.A of the Plan addresses the RM and section VI.A.1 details the computation and distribution of RM amounts to ILECs in all three Tracks; however, section VI.A.2 only states that RM dollars will be available to other carriers in circumstances to be determined in the future. It is absolutely essential that the Commission address this omission in detail before adoption of the Plan.

As the Plan stands, all non-ILEC entities would be required to reduce their access rates according to the Track 1 rules without any means to recoup the shortfalls created by the access reductions. This would not only discourage any further investments and expansion in rural areas thereby limiting competitive choice in rural areas, but it would threaten the viability of already deployed investments and operations. We believe that this result is contrary to Commission's precedent and policy.

The shortfall created under the current Plan for the MRC CLEC operation would range from approximately $350,000 annually at Step 1 of the Track 1 transition up to more than $3M annually at Step 4.[6] These shortfalls were computed using August 2006 intrastate and interstate access minutes and imputing Track 1 end user revenue increases. Such a shortfall would not only have a chilling effect on the company's future construction plans for the CLEC areas, it would jeopardize the viability of the existing CLEC operation.

Track 1 Access Rates for Rural CLECs

While all rural facility based LECs, both ILEC and CLEC, are faced with the same cost structures, where the cost per subscriber rises dramatically as subscriber density decreases to the levels encountered in rural areas, the Plan treats rural ILECs in a significantly different way than it treats rural facility based CLECs. The Plan classifies all CLECs, including those serving rural areas, in Track 1 of its 3 Track system. Rural ILECs, on the other hand, are classified in Track 3.

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[4] Missoula Plan Executive Summary, last paragraph of Section III, at page 13.

[5] Appendix D of the Plan includes a section titled 'AT&T Modeling Assumptions' in which the CLEC RM amount is assumed to be $125 million. However, there is no indication of the method used to compute this amount. It is also not clear how the information from this section was used in the final $1.5 billion estimate.

[6] See Appendix A.

Track 3 contains important provisions which allow rural ILECs to reduce access charges to a level that is higher than the Track 1 rates. After the four-year transition state access rates for Track 3 companies will be essentially equivalent to the current interstate NECA rates. The Track 3 provisions properly recognize that rural areas are more costly to serve than urban areas, and additional revenues are needed to cover these additional costs in order to maintain reasonable local rates. The same principles and proposed policy changes that are allowed for rural ILECs in the Plan should be applied to rural facility based CLECs.

The Commission has adopted a number of rulings and positions supporting the unique position and needs of rural facility based CLECs. Chief among these is the 7th Report and Order and Further NPRM in Docket CC 96-262, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, which established a safe harbor access charge rate level for rural facility based CLECs. Rural facility based CLECs meeting the criteria established in this Order are allowed to charge the appropriate NECA access rates without further cost substantiation. This Order had the effect of stabilizing the rural facility based CLEC market and reducing the requirement to recover high costs from end users.

Paragraph 64 of this Order states,

> "Limiting CLECs to the higher of the benchmark rate or the access rate of its ILEC competitor could prove rather harsh for some of the small CLECs that operate in a rural area served by a price-cap incumbent with state-wide operations. Our rules require such ILECs to geographically average their access rates. This regulatory requirement causes these 'non-rural ILECs effectively to use their low-cost, urban and suburban operations to subsidize their higher cost, rural operations, with the effect that their state-wide averaged access rates recover only a portion of the ILEC's regulated costs for providing access service to the rural portions of its study area. During the course of this proceeding, we became concerned that tying the access rates of rural facility based CLECs to those of such non-rural ILECs could unfairly disadvantage CLECs that lacked urban operation with which they could similarly subsidize their service to rural areas."

The proposed Plan would revoke this safe harbor provision and require rural facility based CLECs to charge the same level of access as the largest ILECs.

The Plan fails to recognize the similar circumstances of rural ILECs and rural facility based CLECs. The Plan as filed recreates the situation that the Commission determined to be 'rather harsh'. MRC submits that the policy decisions determined in the Commission's Docket CC 96-262 Decision should be maintained. Furthermore, the Commission's NPRM in this proceeding did not raise the issue of whether the Commission's policies related to rural facility based CLECs access rates should be revisited.

General Transport Obligations

Rural LECs, both ILEC and CLEC, also face higher costs in the interconnection of their networks with the networks of other larger carriers. The Plan recognizes these unique costs for certain rural ILECs in regard to the rules for interconnection with the Rural Transport Rule. This rule provides an exception to the general transport obligations for the Covered Rural Telephone Companies (CRTCs). The CRTC exception assigns the transport obligation to the interconnecting non-CRTC. Here again the needs of the rural facility based CLEC which are identical to those of the rural ILEC are ignored.

Treatment of Acquired Rural Exchanges

The Plan as submitted requires that a non-CRTC acquired exchange retain its non-CRTC status when acquired by CRTC.[7] This creates an inappropriate hardship for a rural LEC acquiring a rural exchange from a non-rural, Track 1 company.

Such an acquisition removes the rural exchange from the cost averaging of the larger company. Cost averaging with higher-density, lower-cost urban exchanges is one of the factors supporting the charging of lower access rates by Track 1 companies in rural exchanges. Freezing the Track classification on an acquired exchange prevents the rural entity from charging the higher access rate permitted for Track 3 rural ILECs. Without the advantage of cost averaging and without the ability to charge higher access rates, a rural LEC would be at a significant disadvantage in operating such an acquired exchange. The rule would therefore create a significant barrier to the acquisition of Track 1 exchanges by rural ILECs or rural facility based CLECs.

Although the reduced access revenues might be recognized in the purchase price of such an exchange, it would be difficult, if not impossible, for the acquiring company to recover the additional rural costs of expansion or enhancement of services in such a rural exchange.

Requested Relief

MRC is requesting that the Commission address the four areas detailed above that affect rural facility based CLECs prior to adoption of the Plan. The changes requested in these four areas will preserve and continue to foster the development of rural competition by treating rural facility based CLECs in much the same way that the Plan proposes to treat rural ILECs. MRC's proposed changes to the Plan as to its application to rural facility based CLECs, will maintain the level of rural competition enabled by prior Commission policy and rulings.

Additionally, MRC is requesting that the Commission specify the treatment of rural CLEC exchanges that are ordered to be treated as an ILEC under Section 251(h)(2).

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[7] Missoula Plan, Section II.A.1.c.2.

Define the RM Process and Procedures for Rural CLECs

The Commission must define and establish the RM Process for non-ILEC entities that are affected by the Plan's access rules. While it is anticipated that non-ILEC entities may need to raise local rates in an amount equivalent to the increase in ILEC end user charges, it is likely that this increase will not be sufficient to recover the entire shortfall experienced by non-ILEC entities. The Plan seems to express the intent that RM would be available to non-ILEC entities; however specific proposals are missing.

MRC recommends that the following guidelines be used to develop the detailed rules for the distribution of RM amounts to rural facility based CLECs.

The RM amount for a rural facility based CLEC should be computed in much the same manner as the RM is calculated for a Track 3 rural ILEC. The primary difference is that a rural facility based CLEC does not compute an interstate revenue requirement. Wherever the Plan specifies the 'interstate revenue requirement', CLECs would apply their interstate revenues. For rural facility based CLECs, current and base year billed interstate access revenue should be used where a rural Track 3 ILEC would use its interstate revenue requirement.

CLECs are not required to bill subscriber line charges, however, we recommend that the appropriate ILEC subscriber line charge increase be imputed into the calculation of an RM amount for a rural facility based CLEC.

The rural facility based CLEC would then draw from the RM funding source in the same manner as any other Track 3 entity.

Apply Track 3 Access Rules to Rural CLECs

MRC requests that the Commission modify the proposed Plan to allow the Track 3 access rules to apply to rural facility based CLECs that have ETC status. This would have the effect of setting access rates for rural facility based CLECs at the same level as rural ILECs and maintain past policy decisions. CLECs should be identified as rural as they are today using the same size and density measures that are used to identify rural ILECs. In addition, rural CLECs should also be classified as CRTCs just as rural ILECs are.

The Commission has dealt effectively with the issue of the level of interstate access charges in Docket CC 96-262. The 7th Report and Order and Further NPRM in this docket permits rural facility based CLEC to charge the appropriate NECA access rate without further cost support and justification. This Commission Report and Order clearly recognizes the similarity between rural facility based CLECs and ILECs and the network costs that they incur in serving rural areas. It is entirely appropriate to utilize this ruling as a basis for establishing the access rate rules for rural facility based CLECs in the Plan and transition intrastate rates toward this benchmark in the same way that rural ILEC access rates are being transitioned.

Extend the Rural Transport Rule to Rural CLECs

Rural facility based CLECs serve similar areas under the same cost conditions as rural ILECs. These costs impact the cost of interconnecting a rural LEC's network with the networks of other carriers. The rural interconnection exception addresses the unique needs of the rural area for rural ILECs, and this rule should be extended to rural facility based CLECs for the same reasons.

Unfreeze Track Classification for Certain Acquired Rural Exchanges

The Commission should eliminate the provisions of the proposed Plan that prohibit the reclassification of a rural exchange with the acquisition of that exchange by a rural ILEC or a rural facility based CLEC. Such an acquired exchange has the same cost characteristics and is subject to the same circumstances as the other exchanges of the acquiring LEC, and it should be treated in the same way. MRC submits that the Commission's current rules, albeit procedurally lengthy, should not change as a result of an intercarrier compensation reform proceeding. This issue was not raised in the Commission's NPRM and should not be considered in this proceeding.

Impact of Section 251(h)(2) Rulings

The Commission should direct that, following an order to treat a rural CLEC exchange as an ILEC as the Commission recently did for MRC's Terry exchange, the exchange will also be treated as a Track 3 ILEC exchange as described in the Plan.

Respectfully submitted,

Mid-Rivers Telephone Cooperative, Inc.

Gerry Anderson

By: Gerry Anderson, General Manager
October 23, 2006

Appendix A

Computation of Annual Revenue Shortfall
MRC CLEC Operation

Track 1 Access Rates and End User Charges.

Step	1	2	3	4
Access Reduction Loss	$446,395	$1,186,093	$2,766,809	$3,493,053
Imputed End User Increase	$98,226	$196,452	$327,420	$486,497
Net Revenue Shortfall	$ 348,169	$989,641	$2439,389	$3,006,556